

Before the  
Administrative Hearing Commission  
State of Missouri



STATE BOARD OF REGISTRATION FOR THE )  
HEALING ARTS, )

Petitioner, )

No. 04-0969 HA

vs. )

OMAR WAZZAN, M.D., )

Respondent. )

**CONSENT ORDER**

The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On July 20, 2005, the parties filed a "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 334.100.2 (4) and (5), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on July 21, 2005.

  
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JUNE STRIEGEL DOUGHTY  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**  
JUL 20 2005  
ADMINISTRATIVE HEARING  
COMMISSION

STATE BOARD OF REGISTRATION )  
FOR THE HEALING ARTS )

Petitioner, )

v. )

Case No. 04-0969HA

OMAR WAZZAN, M.D. )

Respondent. )

**JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION AND THE STATE BOARD OF  
REGISTRATION FOR THE HEALING ARTS, AND CONSENT ORDER WITH  
JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission 1 CSR 15-2.450(1), and pursuant to the terms of §536.060, RSMo 1994, as it is made applicable to the Administrative Hearing Commission by §621.135, RSMo 1994, Omar Wazzan, M.D., Respondent, and the Missouri State Board of Registration for the Healing Arts (the Board) waive their right to a hearing and decision in the above-styled case by the Administrative Hearing Commission (the Commission) and, additionally, the right to a disciplinary hearing before the State Board of Registration for the Healing Arts under §621.110, RSMo 1994, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below in this *Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law* (the Agreement).

1. Respondent, Omar Wazzan, M.D., acknowledges that he understands the various rights and privileges afforded him by law and understands this Agreement is in lieu of a contested case hearing by the Administrative Hearing Commission where Respondent would have the right to appear and be represented by counsel; the right to a hearing of the charges pending against him; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative commissioner concerning the charges pending against Respondent; the right to a ruling on questions of law by an administrative hearing commissioner; the right to seek recovery of attorney's fees and costs; the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline and the right to obtain judicial review of the decisions of the Commission and the Board. Having been advised of these rights as provided by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this *Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law* and agrees to abide by the terms of this document as they pertain to Respondent.

2. Respondent acknowledges that he has received a copy of the Complaint filed with the Commission in this cause.

3. The parties to this Agreement stipulate that the **Disciplinary Order** voluntarily agreed to by Respondent in lieu of a disciplinary hearing in Part II herein is based only on the **Joint Proposed Findings of Fact** set out in Part I herein. Respondent understands the Board may take

further disciplinary action against Respondent based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered after the approval of this Agreement by the Commission. Respondent and the Board both agree that this Agreement dismisses with prejudice all other factual allegations set forth in the Complaint filed with the Commission in this cause, unless otherwise described herein.

4. Respondent, together with his heirs and assigns, and his attorneys, hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. Respondent understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

#### I.

Based upon the foregoing, Petitioner and Respondent herein jointly stipulate to the following Joint Proposed Findings of Fact and Joint Proposed Conclusions of Law and request that the Administrative Hearing Commission adopt the Joint Proposed Findings of Fact and the

Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law:

### **JOINT PROPOSED FINDINGS OF FACT**

1. The State Board of Registration for the Healing Arts ("Board") is an agency of the State of Missouri created and established pursuant to §334.120, for the purposes of executing and enforcing the provisions of Chapter 334; RSMo.
2. Dr. Wazzan is licensed by the Board as a physician and surgeon, license number 101988. This license was first issued on June 19, 1996. This license is current and active and was current and active at all times relevant to herein.
3. Dr. Wazzan is board certified in neurology.
4. At the time in question, Dr. Wazzan worked at Phelps County Regional Medical Center ("Phelps") in Rolla, Missouri.
5. On or about October 16, 1997, patient, E.W. arrived to the emergency department at Phelps.
6. The emergency department physician examined E.W. and examined a CT scan of E.W.
7. The emergency department physician determined that E.W.'s CT scan was normal and sent the patient home.
8. On or about October 17, 1997, E.W. returned to the Phelps' emergency department.
9. The emergency department physician consulted with Dr. Wazzan who in turn examined E.W., but did not examine E.W.'s CT scan.
10. Dr. Wazzan subsequently ordered a lumbar puncture be performed on E.W.
11. The emergency department physician performed the lumbar puncture.

12. Later that day, after examining the results of the lumbar puncture, Dr. Wazzan had E.W. transferred to a neurosurgeon at Cardinal Glennon Children's Hospital ("Cardinal Glennon") in St. Louis, Missouri.
13. E.W. arrived at the Cardinal Glennon emergency department in cardiopulmonary arrest.
14. E.W. died the next morning.
15. Dr. Wazzan examined E.W.'s CT scan after the lumbar puncture had been performed.
16. Dr. Wazzan realized that E.W.'s CT scan was not normal.
17. Had Dr. Wazzan initially examined E.W.'s CT scan, he would never ordered the lumbar puncture.
18. Instead of ordering the lumbar puncture, Dr. Wazzan would have directly referred E.W. to a neurosurgeon.
19. Failure to examine E.W.'s CT scan during the initial examination falls below the proper standard of care for a physician with the same or similar skill and learning as Respondent.

#### **JOINT PROPOSED CONCLUSIONS OF LAW**

20. Pursuant to § 334.100.2, RSMo Supp, 1997-2004, the Board is authorized to discipline a licensee for conduct that violates one or more provisions of Chapter 334 or any lawful rule or regulation promulgated and adopted thereunder.
21. Section 334.100.2 (4) and (5), RSMo Supp. 1997-2004, provides the following as grounds for discipline:
  2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

- (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or *unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter*, including, but not limited to, the following:
  - (5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession
22. Dr. Wazzan's conduct, as set forth by the foregoing facts, falls within the intendments of § 334.100.2(5), RSMo Supp 1997-2004, in that the conduct was harmful or dangerous to the physical health of a patient
23. Dr. Wazzan's conduct, as set forth by the foregoing facts, falls within the intendments of § 334.100.2(4), RSMo Supp 1997-2004, in that the conduct engaged in was unprofessional and was performed as a function or duty of his profession.
24. Therefore, sufficient cause for the Board to take disciplinary action against Dr. Wazzan's license pursuant to § 334.100.2 (4) and (5), RSMo.

## II.

### JOINT AGREED ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the **Disciplinary Order** entered by the Missouri State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994.

A. The license, **number 101988**, issued to Respondent Omar Wazzan, M.D., is hereby **PUBLICLY REPRIMANDED**.

B. Said discipline shall resolve all factual assertions set forth in this Agreement or identified in Petitioner's Complaint.

C. This **Disciplinary Order** will be effective immediately upon the issuance of a consent order by the Administrative Hearing Commission approving this Agreement and without further action by either party.

D. If the Board determines that Dr. Wazzan violated a term or condition of this Agreement, the Board may move to reinstate above-referenced cause of action and any statute of limitation is expressly tolled or waived for such purposes.

E. In the event the Board determines Dr. Wazzan violated any term or condition of this Agreement, the Board may conduct an evidentiary hearing and thereafter vacate and set aside public reprimand; and, instead probate, restrict, suspend, revoke or otherwise lawfully discipline this license as authorized by law. Additionally, the Board may afford itself of the remedies provided for under Missouri law.

F. Each party shall bear its own attorney costs.

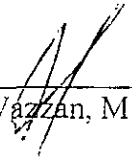
G. This Disciplinary Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by Dr. Wazzan not specifically mentioned in this document or the Board's Complaint in this matter.

H. The parties understand that this Agreement will be maintained as a public document under Missouri law and that this resolution is reportable to the National Practitioner's Data Bank, the Federation of State Medical Boards, as well as the Board's newsletter and website.

In consideration of the foregoing, the parties consent to the entry of record and approval of this *Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law* and to the termination of any further proceedings before the Administrative Hearing Commission based upon the complaint filed by Board in the above-styled case.




**RESPONDENT**  
LICENSEE

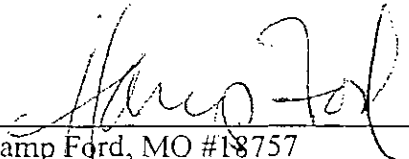
  
Omar Wazzan, M.D.

**PETITIONER**

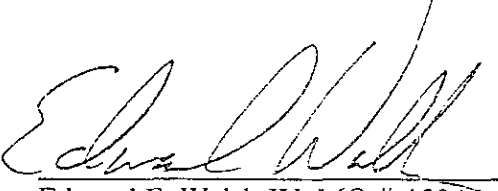
STATE BOARD OF REGISTRATION FOR THE  
HEALING ARTS

  
Tina Steinman  
Executive Director

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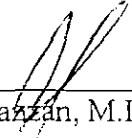
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Dated: June 20, 2005

**WAIVER OF CHAPTER 536, RSMO, APPEAL**

Respondent hereby voluntarily waives any all rights to appeal this Agreement and  
Consent Order as provided for in Chapter 536, RSMo.

  
Omar Wazzan, M.D.

Date Waived: June 20, 2005